

Ashley M. Simonsen (State Bar. No. 275203)
COVINGTON & BURLING LLP
1999 Avenue of the Stars
Los Angeles, CA 90067
Telephone: +1 (424) 332-4800
Facsimile: +1 (650) 632-4800
Email: asimonsen@cov.com

*Attorneys for Defendants Meta Platforms, Inc.;
Instagram, LLC; Meta Payments, Inc.; and
Meta Platforms Technologies, LLC*

Additional counsel listed on signature page

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY PRODUCTS
LIABILITY LITIGATION

MDL No. 3047

THIS DOCUMENT RELATES TO:

Case Nos. 4:22-md-03047-YGR-PHK

People of the State of California, et al. v. Meta Platforms, Inc., et al.

4:23-cv-05448-YGR

State of Florida, et al. v. Meta Platforms, Inc.

State of Montana, ex. rel. Austin Knudsen v. Meta Platforms, Inc.

4-24-cv-00805-YGR

META DEFENDANTS' OPPOSITION TO STATES' ADMINISTRATIVE MOTION FOR STAY

Judge: Hon. Yvonne Gonzalez Rogers
Magistrate Judge: Hon. Peter H. Kang

1 In rejecting most of the States’ merits argument, the Court noted that the States had litigated this
2 issue in a burdensome way that delayed its prompt resolution. Through their stay motion, the States now
3 seek even more delay. With six months now having been spent litigating this issue, they do not come
4 close to meeting their burden to justify this delay: they fail to identify *any* irreparable injury, have not
5 shown they are likely to succeed with their appeal, ignore the real harms to Meta and the case schedule
6 from a stay, and raise unfounded public interest arguments that this Court (like others) has already rejected.
7 Indeed, most of their motion is a rehash of their prior, rejected arguments. The Court should reject further
8 delay. The States chose to bring suit in this Court to obtain the benefits of litigating here, and they should
9 be held to the reasonable discovery standards that accompany that choice to sue.

10 **I. LEGAL STANDARD**

11 A stay pending appeal “is not a matter of right, even if irreparable injury might otherwise result.”
12 *Nken v. Holder*, 556 U.S. 418, 433 (2009) (cleaned up). The moving party bears the burden of (1) making
13 “a strong showing” of likely success; (2) proving irreparable injury; (3) showing that the stay will not
14 “substantially injure” the other parties; and (4) showing that the public interest favors a stay. *Id.* at 434.

15 **II. ARGUMENT**

16 **A. The States will not be irreparably injured by engaging in the ordered discovery.**

17 The States fail to identify any cognizable injury—let alone an irreparable one. That alone justifies
18 denying their motion. *See, e.g., Al Otro Lado v. Wolf*, 952 F.3d 999, 1007, 1010 (9th Cir. 2020) (applicant
19 “must show that a stay is necessary to avoid likely irreparable injury . . . while the appeal is pending”).

20 “[D]iscovery can be burdensome. However, such a burden, while regrettable, does not constitute
21 an irreparable injury.” *Nikon Corp. v. GlobalFoundries U.S., Inc.*, 2017 WL 4865549, at *2 (N.D. Cal.
22 Oct. 26, 2017). That is especially true here: (a) the materials Meta seeks are relevant, and the AGs have
23 made no showing to the contrary (and have not suggested any concrete narrowing of Meta’s requests to
24 date); (b) many AGs have already injected themselves into the third-party discovery they forced Meta to
25 undertake; and (c) two agencies have now argued that Meta should conduct the discovery through AGs.

26 None of the States’ arguments shows irreparable injury. First, this Court has rejected the States’
27 argument that the Order is “apt” to create conflicts between AGs and agencies. Dkt. 1117 at 21–28. So
28 have other courts. *E.g., Illinois ex rel. Raoul v. Monsanto Co.*, 2023 WL 4083934, at *3 (N.D. Ill. June

1 20, 2023). Further, the States provide no evidence of any such conflict, and their speculation is not enough
2 to justify a stay. *See Al Otro Lado*, 952 F.3d at 1007 (“possibility” of irreparable injury is insufficient;
3 harm must be “likely”). The evidence that exists regarding any alleged conflicts between AGs and state
4 agencies cuts the other way: despite many chances, no state agency appeared to represent itself in this
5 dispute, and, while the views of one entity were belatedly shared with Judge Gonzalez Rogers, they were
6 shared *by the California AG’s Office*. 9/13/24 CMC Tr. at 72:1–16. Many AGs represented the agencies
7 even before the Order, confirming the lack of any conflict, and the States have already indicated they are
8 ready to confer on a state-wide basis. And at least two agencies have responded to Meta’s pre-Order
9 subpoenas by arguing that this Court’s Order moots that subpoena. *See* Simonsen Decl., Exs. A, B.

10 Next, the States argue that the discovery here is “substantial.” But contrary to the States’
11 assertions, their affirmative discovery obligations under federal law—the ordinary burdens of discovery—
12 do “not constitute an irreparable injury.” *Nikon*, 2017 WL 4865549, at *2. And by contrast to the more
13 than 770,000 documents Meta has already produced to the States, the 35 States have produced fewer than
14 15,000 documents total. Meta generally has sought discovery from the six to 10 agencies most likely to
15 have relevant information per state—hardly the crushing burden the States now claim, a burden the States
16 have failed to substantiate with evidence. Significantly, while this issue was still pending before this
17 Court (and fully aware of the discovery obligations they were facing), the States recently agreed that they
18 are able to progress the cases on a tight discovery timetable, without ever suggesting that their ability to
19 do so hinged on the outcome of this discovery issue, or disclosing that they would seek potentially
20 meaningful further delay through this stay motion. They should not be able to turn around and claim
21 irreparable injury now, simply because they apparently presumed an outcome the Court rightly rejected.

22 Finally, the States argue that they should not have to “divert their attention” to their discovery
23 obligations. Mot. 4. This naked argument for special treatment¹ has no foundation in the Federal Rules
24

25 ¹ The States’ view that they should be treated differently from other litigants has already delayed this
26 litigation. It is unclear whether the States would have completed their document requests and search term
27 demands yet had the Court not pressed them on their claim that they needed more time because of
28 vacations and sabbaticals, 6/20/24 DMC Tr. at 32:7–11, even though it was over seven months since
(continued...)

1 or in any other standard of civil litigation. Any party to civil litigation would relish the opportunity to
2 avoid “diverting its attention” to its discovery obligations so it could focus on the issues it prefers. But
3 the rules of litigation require both parties to meet reasonable discovery standards, whether they are forced
4 into litigation like Meta or they seek out a federal forum and bring a federal claim, as the States have done.

5 **B. The States are unlikely to succeed on the merits.**

6 The States have failed to carry their burden on the merits. After multiple rounds of briefing and
7 argument, the Court issued a considered opinion rejecting most of the States’ arguments. Federal courts
8 applying a test like the Ninth Circuit test have held that, if the factors are met, state agencies are subject
9 to party discovery in these circumstances. *E.g., In re Generic Pharms. Pricing Antitrust Litig.*, 571 F.
10 Supp. 3d 406, 411 (E.D. Pa. 2021); *Bd. of Educ. of Shelby Cnty. v. Memphis City Bd. of Educ.*, 2012 WL
11 6003540, at *3 (W.D. Tenn. Nov. 30, 2012). So did the only other court to consider this issue in a suit
12 against Meta by a state. Dkt. 882-1. By contrast, the federal cases relied on by the States (which the Court
13 already considered) did not apply the Ninth Circuit test. *E.g., United States v. Am. Express Co.*, 2011 WL
14 13073683 (E.D.N.Y. July 29, 2011). The States largely rely on their objection brief to Judge Gonzalez
15 Rogers; Meta will respond on the timeline set, but notes for now that this Court rejected those arguments.
16 Judge Gonzalez Rogers has also noted to the AGs that “[t]he default is expect to lose this motion
17 There have been times when I have overruled a magistrate judge on a discovery issue, but I can tell you
18 in the almost 13 years that I have been here, it is few and far between.” *See* 9/13/24 CMC Tr. at 65:6–14.

19 The States also argue that this is an issue of first impression in this circuit. Mot. 3. First, that is
20 simply incorrect: a district court in this circuit rejected the States’ position. *Washington v. GEO Group*,
21 2018 WL 9457998, at *3 (W.D. Wash. Oct. 2, 2018). Further, as noted, federal courts applying the Ninth
22 Circuit test have agreed with this Court and disagreed with the States. The States’ case, by contrast,
23 involved an issue of first impression on a purely legal dispositive merits issue, unlike here with findings
24 reviewed for clear error. *See Maxcrest Ltd. v. U.S.*, 2016 WL 6599463, at *2 (N.D. Cal. Nov. 7, 2016).

25
26
27 investigating. Similarly, the States would largely not be preserving documents but for the Court ordering
28 them to. The AGs are able to draw on 35 offices, just one of which employs over **“5,600** lawyers,
investigators, sworn peace officers, and other employees.” <https://oag.ca.gov/office> (emphasis added).

1 Finally, the States argue that their appeal raises “constitutional questions,” but this Court has
2 already rejected those arguments, as have other courts. Dkt. 1117 at 12–16; *e.g., Monsanto*, 2023 WL
3 4083934, at *3. There is no reason to reconsider that holding. The States’ federalism arguments are
4 particularly unconvincing because they chose to invoke a federal forum to seek relief under a federal
5 statute and achieve the benefits of a multistate action in an MDL. In doing so, they have burdened the
6 Court’s docket by forcing motions practice that required drafting a 248 page opinion over four months on
7 an issue that had been previously settled by another court against many of them and that federal courts
8 have repeatedly ruled on against states. Indeed, it is ironic that the States would rely on a purported
9 “violat[ion of] the federalism principles at the heart of our federal constitutional system,” Mot. 3, when at
10 least one of them has threatened to disobey the Court’s order simply because it disagrees with it—a well-
11 established violation of core constitutional principles, *see Cooper v. Aaron*, 358 U.S. 1, 18–19 (1958).

12 **C. Meta would be prejudiced by a stay, as would the case schedule.**

13 Meta will be meaningfully prejudiced if this discovery is delayed further, and doing so will
14 jeopardize the ability to complete Meta’s discovery into the States on the current case schedule. Meta
15 served this discovery in February 2024. This filing comes after the initial substantial completion deadline
16 for discovery and just months away from the extended deadline. To date, Meta has received far less than
17 bare-minimum discovery from the States. Further delays would impair the Parties’ ability to adequately
18 meet and confer over any disputes, not to mention Meta’s ability to adequately review the States’
19 productions in time to conduct depositions based on those documents. The States’ briefing ignores these
20 realities. The States should comply with their court-ordered discovery obligations without further delay.

21 While the States argue that Meta “has sought and received such discovery” through third-party
22 subpoenas, Mot. 4–5, that is false: the vast majority of States have not produced any discovery in response
23 to the subpoenas. In addition, as the Court’s order recognized, the burdens on Meta of negotiating with
24 hundreds of agencies (as opposed to each State providing discovery for the several agencies in that state)
25 are enormous. Dkt. 1117 at 40. More fundamentally, if the States will produce the discovery in response
26 to third-party subpoenas, that defeats their argument that they face irreparable injury from the Court’s
27 Order to do so. And, as noted, two agencies have already attempted to moot those subpoenas based on
28 the Court’s Order. The Court should reject the States’ attempt to have it both ways.

1 The States also argue that Meta “delayed” in seeking this discovery. That argument borders on
2 sanctionable—a party may not adopt a losing stonewall position and then blame the other side for not
3 accommodating their losing position. But it is also false. Meta raised the issue of producing responsive
4 state agency documents through party discovery before serving any party discovery requests in February
5 2024. When the States objected, Meta promptly litigated the issue with briefing in March. And as the
6 Court considered the Parties’ submissions after the May 6 hearing, Meta began serving third-party
7 subpoenas (despite the burden of doing so and the fact that, as the Court’s order confirmed, Meta should
8 never have had to do so in the first place) to protect its rights and keep discovery on track.

9 **D. The public interest supports denying a stay.**

10 There is a public interest in the prompt execution of federal courts’ orders and in discovery
11 proceeding in an efficient and timely way—especially on a case schedule as rapid as this one. *Cf. JW*
12 *Gaming Dev. v. James*, 544 F. Supp. 3d 903, 922 (N.D. Cal. 2021) (“There is an undoubted, compelling
13 public interest in ensuring that valid judicial judgments are enforced.”). The public interest supports
14 enforcing the Court’s Order, not further delaying discovery served more than six months ago. And the
15 public interest supports allowing individuals and entities faced with the threat of government lawsuits
16 brought with the authority of entire states to have fair and reasonable discovery into those states. *League*
17 *of United Latin Am. Citizens v. Abbott*, 2022 WL 1540589, at *3 (W.D. Tex. May 16, 2022) (“Texas’s
18 position is also impractical. It would effectively mean that the [opposing party] could obtain only a
19 minuscule portion of the universe of relevant documents by party discovery.”).

20 The States fail to advance any public interest in a stay. They vaguely gesture at the “vindication
21 of the rights and protections afforded by consumer protection laws,” “proper functioning of state
22 government,” and “principles of federalism.” Mot. 5. But those unsupported statements simply rehash
23 arguments the Court has already rejected, *see supra* II.A.–B., and are nothing more than a request to avoid
24 the obligations of the litigation they chose to bring.

25 **III. CONCLUSION**

26 For the reasons set forth above, Meta respectfully requests that the Court deny the motion to stay.

1 Dated: September 24, 2024

2 Respectfully submitted,

3 **COVINGTON & BURLING LLP**

4 /s/ Ashley M. Simonsen

5 Ashley M. Simonsen (State Bar. No. 275203)
6 COVINGTON & BURLING LLP
7 1999 Avenue of the Stars
8 Los Angeles, CA 90067
Telephone: + 1 (424) 332-4800
Facsimile: +1 (650) 632-4800
Email: asimonsen@cov.com

9 Phyllis A. Jones, *pro hac vice*
10 Paul W. Schmidt, *pro hac vice*
11 COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
12 Washington, DC 20001-4956
Telephone: + 1 (202) 662-6000
Facsimile: + 1 (202) 662-6291
Email: pajones@cov.com
Email: pschmidt@cov.com

13 Emily Johnson Henn (State Bar. No. 269482)
14 COVINGTON & BURLING LLP
3000 El Camino Real
15 5 Palo Alto Square, 10th Floor
16 Palo Alto, CA 94306
Telephone: + 1 (650) 632-4700
Facsimile: +1 (650) 632-4800
Email: ehenn@cov.com

17 Isaac D. Chaput (State Bar No. 326923)
18 COVINGTON & BURLING LLP
19 Salesforce Tower
20 415 Mission Street, Suite 5400
21 San Francisco, CA 94105
Telephone: +1 (415) 591-6000
Facsimile: +1 (415) 591-6091
Email: ichaput@cov.com

22 Gregory L. Halperin, *pro hac vice*
23 COVINGTON & BURLING LLP
620 Eighth Avenue
24 New York, NY 10018-1405
Telephone: +1 (212) 841-1000

1 Facsimile: +1 (212) 841-1010
2 Email: ghalperin@cov.com

3 *Attorneys for Defendants Meta Platforms, Inc.;*
4 *Instagram, LLC; Meta Payments, Inc.; and*
5 *Meta Platforms Technologies, LLC*

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28